

Spheres of Influence

# Trading Trash:



**Why the U.S.  
Won't Sign On to  
the Basel Convention**



According to estimates provided by the United Nations Environment Programme, more than 400 million tons of hazardous waste is produced worldwide every year, most of it in industrialized countries. A pervasive concern among environmentalists is that in the absence of sufficient controls, hazardous waste shipments on the international market will travel "the path of least resistance" and move inevitably toward cash-starved developing countries, which often lack the political or economic clout to resist them. The unfortunate reality is that many developing countries lack the capacity to manage hazardous waste safely, and hazardous imports have the potential to seriously threaten the health of local populations and ecosystems if not managed properly.

In the mid-1980s, the international community initiated efforts to reduce the flow of hazardous waste from industrialized nations to poorer, developing countries. These efforts resulted in a treaty known as the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, which was brokered by the United Nations Environment Programme and concluded in Basel, Switzerland, in 1989. The convention's ultimate goal is to strictly regulate the international movement of hazardous waste and material, and to ensure that such waste is managed and disposed of in an environmentally sound manner. Specific requirements of the convention include prior notification by the exporting country, informed consent by the importing country, and limits on the transfer of hazardous waste to countries that have not yet ratified the convention. The convention also imposes controls on packaging and requires take-back of illegal shipments. With 123 member nations, the Basel Convention is one of the most comprehensive of the international agreements (which include numerous regional agreements with similar mandates) that regulate the transport of hazardous waste.

The Basel Convention emerged as a United Nations response to several episodes of illicit dumping of hazardous waste that alarmed the public in industrialized and developing countries alike. Among these were a number of so-called "toxic cargo" incidents involving ships loaded with hazardous waste that were forced to travel from one international port to another in search of a final disposal site. For example, a vessel named the *Khian Sea* departed from Philadelphia, Pennsylvania, in August 1986 loaded with 14,000 tons of municipal incinerator ash. After dumping 4,000 tons of the ash on a beach in Haiti (the ash is currently in the process of being returned to the

United States), the ship plied the waters of five continents for 27 months looking for a country that would accept the remainder of its cargo, most of which is now suspected of having been dumped in the Indian Ocean.

### United States Participation

Although the U.S. Senate granted the convention its advise and consent in 1992 (signifying the intention of the United States to ratify the treaty), the United States remains the only industrialized country and the only one within the Paris-based Organisation for Economic Co-operation and Development (OECD) that has yet to ratify the Basel treaty. The United States won't become an official party until the U.S. president delivers a written "instrument of ratification" to the United Nations. According to Harvey Alter, a Frederick, Maryland-based consultant to the Business Recycling Coalition, an independent coalition of companies and trade associations in the United States and Canada, this can happen only if Congress approves legislation that provides the United States with the statutory authority it needs to fulfill the convention's contractual obligations. The only such legislation currently being considered was drafted by the Clinton administration in January 1999. This legislation is expected to be considered by the current Congress.

Paul Hagen, an industry consultant on Basel negotiations and a director at the Washington, DC-based law firm Beverage and Diamond, says a major stumbling block to U.S. ratification is the extent to which the Resource Conservation and Recovery Act (RCRA) may need to be modified in order for the United States to participate in the convention. RCRA is the primary legislation governing both domestic hazardous waste management and the import and export of hazardous waste in the United States. According to Hagen, the essential problem is that the convention lacks a clear mechanism for defining what constitutes hazardous waste. Problems with characterizing both hazardous waste and environmentally sound management have posed a continuing difficulty, with each country developing its own definitions. "We're talking about more than 120 governments here," says Hagen. "There's no harmonized hazardous waste characterization procedure. The U.S. Environmental Protection Agency [EPA] can control RCRA hazardous waste for import and export purposes, but they can't say how they are going to control Basel wastes because no one is really sure what that is."

Coming up with a procedural mechanism for defining hazardous waste is a major agenda item for the convention's technical working group. The only definitional

scheme within the convention thus far is a list of specific hazardous wastes that is contained in Annex VIII to the convention (which was adopted in 1998). But some of the hazardous wastes listed in Annex VIII are considered nonhazardous recyclables under RCRA. The concern among industry and some U.S. congressional officials is that ratification of the Basel Convention will lead to changes in the list of hazardous wastes that are covered by RCRA and that additional regulations for these materials will follow. Furthermore, the Clinton administration's draft legislation appears to impose U.S. environmental standards on receiving countries by requiring the EPA to verify that environmental standards in the receiving country are "at least as environmentally protective as those in the United States." This responsibility lies outside the bounds of the agency's current authority under RCRA and would give the EPA an unprecedented role in international trade in hazardous waste.

### Industry Raises Concerns

Within the United States, these kinds of definitional concerns have impeded ratification along with additional worries over the Basel Ban, a 1995 proposed amendment to the convention that would prohibit transfer of hazardous waste from OECD to non-OECD countries altogether. Furthermore, the requirement that importing countries process wastes in a way that matches or exceeds U.S. standards for environmentally sound management has raised industry concerns. Hagen says that this requirement could turn out to be a *de facto* ban because it would be impossible for developing countries to match their own environmentally sound management practices with those of the United States.

According to Alter, the most worrisome issue for industry is not how the Basel Convention regulates the wastes headed for final disposal but, rather, how it governs trade of hazardous materials destined for recycling. Recyclables (in some cases known as secondary materials) constitute an enormously valuable commodity on world markets. Developed countries routinely ship recyclable hazardous waste to developing countries in need of raw materials. For example, spent lead-acid batteries are shipped to developing countries that use them to recover elemental lead. Likewise, so-called galvanic sludges (residual sludges left over from electroplating operations), which provide a valuable source of nonferrous metals, are sometimes shipped to industrialized nations by developing countries that lack the capacity to extract the metals safely. "The world trade in secondary materials for recycling is huge," says Alter.



The Basel Convention makes no distinction between hazardous waste bound for recycling as manufacturing materials and hazardous waste destined for final disposal—both are held to the same kinds of international trade restrictions. Parties to the convention can transfer hazardous waste, including secondary materials, only among themselves. Nonparties can trade in Basel-covered wastes with parties to the convention only if they enter into bilateral (or multilateral) agreements that depend upon the receiving country being able to show that they will manage the wastes in a manner consistent with Basel Convention goals for environmentally sound management. Currently, the United States has agreements with Mexico, Canada, Costa Rica (U.S. imports only), and Malaysia (U.S. imports only), and a multilateral agreement with the OECD on recyclables. And so, while stakeholders debate the various consequences of ratifying the convention, industry approval of ratification as a means to take advantage of trade opportunities with the rest of the world continues to grow.

### The Basel Ban

Industry's sentiments are not shared by environmental groups such as Greenpeace and the Basel Action Network (an advocacy organization based in Seattle, Washington), both of which see the original Basel Convention as an instrument that did more to legitimize trade in hazardous waste than to eliminate it. In recent years, both of these organizations have pushed hard for adoption of the Basel Ban, which has so far been ratified by 7 of the 15 countries within the European Union, as well as Sri Lanka, Slovakia, Ecuador, Paraguay, Uruguay, and Panama.

According to Basel Action Network coordinator Jim Puckett, without the added ban amendment, the Basel Convention overlooks a critical reality of the international hazardous waste trade: wealthy OECD countries faced with mounting expenses and obstacles to domestic disposal and processing of hazardous waste have a powerful financial incentive to seek cheaper alternatives overseas, and as long as this option is available to them, they have a financial disincentive to maximize pollution cost internalization and waste minimization at home. Consequently, he says, the only way to ensure that hazardous waste doesn't make its way to developing countries is to ban these kinds of economically motivated exports altogether. Puckett also says that by ratifying the convention without simultaneously ratifying the Basel Ban amendment, the United States will open the doors to

massive amounts of hazardous wastes waiting to flow toward developing countries.

"The ban is now the heart of the convention and upholds its most basic principles," says Puckett. "Of all countries, it is the rich and developed that should have their own disposal facilities at home, minimize generation of hazardous waste, and minimize transboundary movement of hazardous waste—all requirements of the convention. What we want to do is put up a wall to stop waste flows to [lesser-developed] countries."

But how much waste is actually flowing to developing countries? Accurate figures are extremely difficult to obtain, especially considering the practice of illegal trading, which is practically impossible to monitor. According to Kees Wielenga, an expert on waste management policy with the European Commission in Brussels, Belgium, 97% of all hazardous waste exported by the European Union countries in 1995 was imported by countries within the OECD. "[As regards OECD to non-OECD transfer] we're not talking about a major trade issue," he says. Additionally, Marcelo Furtado, the coordinator of the Waste Trade Campaign with Greenpeace International in São Paulo, Brazil, says the trend has shifted from shipping wastes for disposal in developing countries to shipping them there for recycling. "Now the waste is [labeled] as a commodity," he says. Furtado also notes that the biggest generators of hazardous waste are also usually the biggest exporters. These countries include the United States, Canada, Australia, and Japan.

As to where the waste goes, regional treaties such as the 1989 Lomé IV Convention, which prohibits 69 countries among the African, Caribbean, and Pacific group of member states from importing hazardous waste, and the 1991 Bamako Convention, which bans all hazardous and radioactive waste imports into Africa, are restricting access to old markets. According to Furtado, much of the waste appears to be going to Asian countries, several of which have developed mini-economies based on recycling.

Opponents to the ban say that exporters will have more incentive to help developing countries achieve technical capacity and environmentally sound management if they allow shipments of hazardous materials for processing. "It's a cynical argument that countries that accept hazardous waste will get technical assistance," Puckett says. "The implication is that the technology won't be available to countries that don't accept the wastes." Puckett calls hazardous waste recycling "dumping by another name," and says that Greenpeace investigations of about 50 recycling operations in non-OECD

countries found that in many cases recycling was never intended. Rather, the wastes were received for payment and then simply dumped, burned, or used as fill material. "In other cases, when actual recycling does take place, hazardous residues and other forms of pollution are left behind in the receiving countries," he says.

But Alter insists that the best way to help developing countries pursue environmentally sound management is to engage them in the waste trade rather than shut them out altogether. To support his view, he describes an as-yet unpublished study that was recently conducted by Ulrich Hoffman, an economist with the United Nations Conference on Trade and Development, in cooperation with the government of the Philippines. This study investigated the potential effects of a waste ban on what Hoffman describes as a "first-class recycling facility" for lead-acid batteries in Manila. Says Alter, "This place measured blood lead among its employees, increased the price of the batteries to shut out the informal sector, and wouldn't take used or crushed batteries. What they found is that without imported batteries, the operation would collapse. This is a business based on environmentally sound integrated recycling, and a ban would kill it."

Sources at the EPA say the ban amendment is based on an arbitrary and nonenvironmental distinction between countries, and it is unlikely that the United States will ratify the amendment as it currently stands. They also note that the ban has gotten a cool reception lately among developing countries, presumably because those countries believe that ratifying the ban could potentially place them at a significant economic and environmental disadvantage.

### Ratification in the United States

Barring the introduction of an alternative bill, the Clinton administration's draft legislation is due to go to Congress later this year. If passed by Congress, an instrument of ratification making the United States a party to the convention could be forwarded to the United Nations at any time. An important consideration is that major decisions are generally made during Conferences of the Parties, which are meetings of the top delegates to the convention at the ministerial level. The fifth Conference of the Parties (COP-5) is scheduled for December 1999. If Congress doesn't soon agree upon the terms of the legislation, the next opportunity to vote on Basel Convention decisions won't come until COP-6, which is scheduled for the spring of 2001.

Charles W. Schmidt